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LEE EDWARD [redacted]

On Petition for a [redacted]

to [redacted]

[redacted]

RESPONDENT'S BRIEF [redacted]

MOTION TO PROCEED [redacted]

[redacted]

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26 pp

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

No. 84-265

STATE OF CALIFORNIA,

Petitioner,

v.

LEE EDWARD HARRIS,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of the
State of California

RESPONDENT'S BRIEF IN OPPOSITION and MOTION TO PROCEED IN FORMA PAUPERIS

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IN THE

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LEE EDWARD HARRIS,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

There are at least four reasons why certiorari should be denied in this case. First, and probably most critical, is the fragmented and incomplete record which does not lend itself to an intelligent discussion of the Sixth Amendment issues. The record is replete with "procedural snarls" and "evidentiary gaps" because the State abdicated its responsibility to come forward with controverting evidence. Petitioner waived its opportunity to present evidence, not because of any reliance on the trial court's ruling (as suggested in the Petition for Certiorari), but because of a prosecutor's myopic and misinformed reading of existent law.

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Second, this case is fundamentally about state evidence law. The California Supreme Court reacted to a a one-sided and incomplete record with a decision on the law of evidentiary burdens. The court's opinion is important not to Sixth Amendment scholars, but to California lawyers concerned with when the burden of going forward with the evidence shifts from one party to the other.

Third, this Court's jurisdiction under 28 USC § 1257 is questionable since the federal rights asserted in the petition were never "raised, preserved, or passed upon in the state courts below." The request for an evidentiary remand was not made until the petition for rehearing. Even then it was argued as a question of statutory law. Petitioner never informed the state court that federal rights were at stake.

Fourth, respondent is scheduled to appear for trial on September 20. His jury will then be chosen from multiple lists according to a new statute which specifically remedies the challenge made below.[1/]

In short, this case does not present the Sixth Amendment issues "in a manner that warrants the exercise of the certiorari jurisdiction of this Court." (Murel v. Baltimore City Criminal Court (1972) 407 U.S. 355, 357, 32 L.E.2d 791.)

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1. California Code of Civil Procedure section 204.7 has been amended to provide for the selection of jurors from registered voter and motor vehicle lists when the latter can be added without significant cost. The statute is reproduced in the appendix to this brief at page 20.

1. Petitioner Waived Presentation of Rebuttal Evidence

Petitioner paints a picture of the State lulled into not presenting rebuttal evidence by reliance on the trial court's ruling that respondent had not made a prima facie case, and then being "blind-sided" by a revolutionary California Supreme Court which radically departed from "all existing authority." (Pet. Cert. pp. 22, 24.) This portrait bears little resemblance to the record.

Petitioner never intended to meet respondent's case with evidence. From the very beginning the prosecutor saw this as a settled legal matter, rather than an open evidentiary question. Through a misreading of California law he believed that the selection of jurors solely from voter registration lists was constitutionally valid no matter what evidence might be presented. "The People's position is quite simple," he told the court, the selection of jurors from voter registration lists "satisfies the law."

The prosecutor was willing "to stipulate to any evidence [respondent] wishes to present regarding demography, population, ethnic variances . . . [because] once the evidence that the juror rolls are drawn at random from registered voters is before the Court, that that will . . . satisfy the law as the People believe it exists under certain cases that I will cite to the Court . . . ."

The California Supreme Court opinion in the Sirhan case, according to the prosecutor, was "controlling in this

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case," and established that the selection of jurors solely from registered voter lists was constitutional per se.[2/]

Relying on this mistaken reading of Sirhan the prosecutor was content to quibble with respondent's evidence -- the census data was too old, the surveys were not long enough, disparities were not calculated correctly and total population figures had to be reduced to sets of jury eligibles.[3/]

Petitioner offered no evidence that respondent's data was inaccurate. Petitioner presented no evidence that the statistical refinements it wanted would make any constitutional difference. Petitioner offered no testimony suggesting that the disparities respondent proved were caused by something other than the jury selection system itself. And petitioner presented no evidence of any compelling state interest that would justify these disparities.

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2. People v. Sirhan (1972) 7 Cal.3d 710, 102 Cal.Rptr. 385. The prosecutor's opening and closing arguments are appended hereto at pp. 13-18.

3. For some unarticulated reason, both sides tried the case on the assumption that the jury had to be representative of the entire country rather than of a 20 mile radius around the courthouse which may be the California law. (See People v. Harris (1984) 36 Cal.3d 36, 48 and Code of Civ. Proc., § 203, reproduced below at page 20.)

2. The Opinion Below Deals With Matters of State Procedure

On appeal to the California Supreme Court, petitioner continued to argue that the use of voter registration lists was constitutionally sacrosanct, again citing Sirhan. The court responded that it had never said such a method of selecting jurors was unassailable and pointed to language in Sirhan that clearly foreshadowed the holding now under review:

> "In Sirhan, however, this court held that '[t]he use of voter registration lists as the sole source of jurors is not constitutionally invalid [citations], at least in the absence of a showing that the use of those lists resulted "in the systematic exclusion of a 'cognizable group or class of qualified citizens'" [citations], or that there was "discrimination in the compiling of such voter registration lists." [Citations.]' (Id., at pp. 749-750.) However, it is exactly the requirement of Sirhan regarding exclusion of a cognizable group that defendant has attempted to show." (36 Cal.3d at p. 57, emphasis added.)

It never has been the law that voter registration lists are unassailable. Even the authorities cited by petitioner recognize this.[4/] Attacks on voter registration lists have been going on for years, but have uniformly failed because either the defendants presented no proof (e.g., Sirhan) or because the state had come forward with convincing rebuttal evidence.

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4. Davis v. Zant (11th Cir. 1983) 721 F.2d 1478, 1484: Although "courts have sanctioned the use of voter registration lists as the sole means of jury selection . . . the use of such lists does not establish as a conclusive fact that a true cross-section of the community is being drawn."

State v. Gretzlar (Ariz. 1980) 126 Ariz. 60, 612 P.2d 1023, 1040: "The use of voter registration lists as a sole source of jurors is not constitutionally infirm absent a showing of systematic exclusion in the compiling of such lists."

It is respondent's uncontroverted proof that makes this case unique. What the California Supreme Court did was to apply principles settled by Duren and Taylor[5] to a case where "the state has not attempted to rebut the defendant's proof but has shortsightedly rested its entire argument on the mistaken claim that defendant failed to present a prima facie case." (Harris, 36 Cal.3d at p. 59, emphasis added.)

The opinion below expresses no novel Sixth Amendment doctrine. It is concerned with California rules of evidence. The court saw the "fundamental" question in the case as being which party had the burden of refining the statistical studies to show that a "more narrowly defined population would or would not result in a disparity of constitutional significance." (Harris, 36 Cal.3d at p. 45.) This was answered by a classic Wigmorian analysis of evidentiary burdens.[6] After looking to the difficulty and expense of obtaining the data petitioner claimed is important, and after balancing the parties' opportunity for knowledge, the Court shifted the burden of refinement to petitioner. The ultimate burden of persuasion (on whether the Sixth Amendment has been violated) remained untouched; the court held only that respondent had presented enough evidence to shift the burden of going forward to petitioner.

In fact the treatment of the burden of production issue by the California Supreme Court was not all that

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5. Duren v. Missouri (1979) 439 U.S. 357, 58 L.E.2d 579; Taylor v. Louisiana (1975) 419 U.S. 522, 42 L.Ed.2d 690.

6. 9 Wigmore, Evidence (Chad. Rev. 1981), pp. 292-297.

different from that of this Court in Texas Dept. of Community Affairs v. Burdine (1981) 450 U.S. 248, 253-255, 67 L.Ed.2d 207.) But whether different or not, whether wise or not, the decision below is concerned with matters of state evidence law and is beyond this Court's certiorari jurisdiction.

Without question it is within the power of California to regulate its own legal procedures "including the burden of producing evidence and the burden of persuasion." (Speiser v. Randall (1958) 357 U.S. 513, 523, 2 L.Ed.2d 1460.) This Court has recognized that allocation of the evidentiary burden of production is "an important prodecural device" retained by the States, so they can fairly and expeditiously regulate the course of trials. (Patterson v. New York (1977) 432 U.S. 197, 230, fn. 9, 53 L.Ed.2d 281.)

Federal rights are litigated through the medium of state procedural laws. Within certain broad limits states are free to experiment with their own procedural and evidentiary devices. (Williams v. Georgia (1955) 349 U.S. 375, 382, 99 L.Ed. 1161; Chandler v. Florida (1981) 449 U.S. 560, 582, 66 L.Ed.2d 740.) State rules on how and when to challenge a jury venire have been upheld by this Court as valid exercises of state power.[7] And if states can assign the burden of persuasion to one party or the other, surely no federal issue is raised by a fair and rational allocation of an

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7. Tarrance v. Florida (1903) 188 U.S. 519, 47 L.Ed. 572; Michel v. Louisiana (1956) 350 U.S. 91, 100 L.Ed. 83.

intermediate burden of production.[8] This Court has even dismissed, for want of a substantial federal question, a petition raising the constututionality of a statute allocating the burden of production.[9]

The opinion below stands for the proposition, often stated here, that a prima facie case cannot be met by "mere suggestions or assertions," and that the burden of production calls for admissible evidence, not "argument of counsel." (Duren, 439 U.S. at p. 369; Burdine, 450 U.S. at p. 254, fn. 9.) The court's holding is repeatedly limited to the key fact in this case -- the absence of any rebuttal evidence.[10] The opinion leaves open, for prosecution proof, the many ways in which the single source use of voter lists can be upheld. For example, disparities might be reduced to constitutional limits by showing that the jury was representative of the 20 mile area around the courthouse rather than of the county at large. Or perhaps a longer survey at the courthouse door would reveal a better ethnic mix. Or perhaps the state could come forward with evidence showing

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8. Leland v. Oregon (1952) 343 U.S. 790, 96 L.Ed 1302; see also, Patterson v. New York (1977) 432 U.S. 197, 53 L.Ed.2d 281.

9. Morrison v. California (1933) 288 U.S. 591, 77 L.Ed. 970, discussed in Patterson v. New York, supra, 432 U.S. 197, 230, fn. 9, 53 L.Ed.2d 281 and Morrison v. California (1934) 291 U.S. 82, 78 L.Ed. 664.

10. "In this case, defendant has made a showing adequate to demonstrate, in the absence of rebuttal evidence by the state . . . ." (36 Cal.3d at p. 58, emphasis added.)

"In the present case, however, the state has not attempted to rebut the defendant's proof but has shortsightedly rested its entire argument on the mistaken claim that defendant failed to present a prima facie case." (36 Cal.3d at p. 59, emphasis added.)

there is no significant disparity when minority group eligibles are counted instead of total populations.

The opinion also leaves room for the state to demonstrate that the disparities are not inherently caused by choosing jurors solely from voter registration lists. The prosecutor might show that the underrepresentation does not occur until after the initial drawing is made, perhaps, for example, because Blacks and Hispanics do not mail back the original questionnaire with the same frequency as other ethnic groups. Or that the disparities are caused by statutory qualifications (such as language proficiency) or exemptions (such as hardship) which might fall differently on different ethnic groups.[11/]

And finally, the prosecution might show that any disparity is justified by compelling state interests. That is not an insurmountable burden. In a recent California case the prosecutor came forward with evidence of "explanation and justification" and established that the county was "doing all that reasonably could be expected to achieve the constitutional goal." (People v. Jones (1984) 151 Cal.App.3d 1029, 199 Cal.Rptr. 185, 187.)

The decision below was a legitimate response to a local problem -- at what point during the proof of a controverted fact does the burden of producing evidence shift to the opposing party? This is a matter of state evidence law which need not, and in our federal system, cannot, be of concern here. "It would be a wholly

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11. The California statutes on juror qualifications and exemptions are appended hereto at page 19.

unjustifiable encroachment by this Court upon the constitutional power of States to promulgate their own rules of evidence to try their own state-created crimes in their own state courts, so long as their rules are not prohibited by any provision of the United States Constitution, which these rules are not." (Spencer v. Texas (1967) 385 U.S. 554, 568-569, 17 L.Ed.2d 606.)

3. The Federal Rights Asserted By Petitioner Were Not Timely Raised Below

This Court has "consistently refused" to decide federal issues raised for the first time in a petition for certiorari. (Webb v. Webb (1981) 451 U.S 493, 499, 68 L.Ed.2d 392; 28 U.S.C. § 1257.) It is equally established that "the attempt to raise a federal question after judgment, upon a petition for rehearing, comes too late, ..." (Herndon v. Geogia (1935) 295 U.S. 441, 443; 79 L.Ed. 1530.)[12/]

Petitioner did not request an evidentiary remand until the petition for rehearing. This could have been advanced in earlier briefs as an alternative form of relief, but was not. The presumption now is that the request was denied under a long established California rule that a party will not be heard "to suggest upon petition for rehearing, that, after all, there are questions of fact which [it]

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12. This is not a case where a state court ruling was so unanticipated that the federal question could only have been raised on rehearing. As discussed above, the result in this case was clearly foreshadowed by Sirhan. Petitioner was bound to have known this and cannot claim surprise. Stern & Gressman (5th ed. 1978) Supreme Court Practice, p. 221.

desires to have determined, and upon which [it] might have relied, had [it] chosen to do so." (Atherton v. Sup. San Mateo Co. (1874) 48 Cal. 157, 160; County of Imperial v. McDougal (1977) 19 Cal.3d 505, 513, 138 Cal.Rptr. 472.)

Even if the petition for rehearing was a timely assertion of the State's constitutional rights, it was not done with the specificity required to invoke this Court's jurisdiction. The petition for rehearing asks for a remand under a state statute only.[13/] It does not even contain a hint that any federal rights are being asserted.[14/] While this Court's jurisdiction may "not depend on citation to book and verse" (Eddings v. Oklahoma (1982) 455 U.S. 104, 113, fn. 9, 71 L.Ed.2d 1) it at least requires that the state court be "apprised of the nature or substance of the federal claim . . . ." (Webb v. Webb (1981) 451 U.S. 493, 501.) The California court was never told that its decision to reverse without an evidentiary remand implicated federal rights. On this record the assumption must be that petitioner's Duren/Fourteenth Amendment claim was not passed on "'due to want of proper presentation in the state courts.'" (Exxon Corp. v. Eagerton (1983) ___ U.S. ___, 76 L.Ed.2d 497, 504, fn. 3; Hanson v. Denckla (1958) 357 U.S. 235, 243, 2 L.Ed.2d 1283.)

The Petition for a Writ of Certiorari should be

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13. The Petition for Rehearing remand argument is reproduced in the Petition for a Writ of Certiorari at pages 139-149.

14. Since the federal rights were not raised below, there has been a concomitant failure to comply with Rule 21.1(h)'s requirement that the petition contain "such pertinent quotation of specific portions of the record . . . as will show that the federal question was timely and properly raised."

denied because the federal rights asserted were never "raised, preserved, or passed upon in the state courts below." (Cardinale v. Louisiana (1969) 394 U.S 437, 438, 22 L.Ed.2d 398.)

4. Conclusion

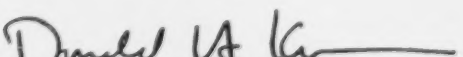
"The State offered no evidence at all either attacking respondent's allegations of [constitutional disparity] or demonstrating that his statistics were unreliable in any way . . . In light of the State's abdication of its responsibility to introduce controverting evidence . . . respondent was entitled to prevail." (Casteneda v. Partida (1977) 430 U.S. 482, 488, 492, 51 L.Ed.2d 498.)

Respondent respectfully prays that the Petition for Writ of Certiorari be denied.

Dated this 14th day of September 1984, at Los Angeles, California.

Respectfully submitted,

FRANK O. BELL, JR.
State Public Defender

By 
DONALD L.A. KERSON
Deputy State Public Defender

Attorneys for Respondent

LONG BEACH, CALIFORNIA, THURSDAY, APRIL 17, 1980; 10:10 A.M.

DEPARTMENT SOUTH C HON. D. STERRY FAGAN, JUDGE

APPEARANCES:

The defendant with his counsel, DENNIS W. CARROLL, Deputy Public Defender of Los Angeles County; KURT S. SEIFERT, Deputy District Attorney of Los Angeles County, representing the People of the State of California.

". . . .

"MR. SEIFERT: The People's position is quite simple. We feel that the selection of registered voters drawn at random by the registrar from the registrar of voters rolls by the jury commissioner satisfies the law as it exists today and we are in a position to stipulate to any evidence counsel wishes to present regarding demography, population, ethnic variances over the area of this judicial district or anything of that, in that regard that he considers forms a basis for the challenge.

"We will basically submit that once the evidence that the juror rolls are drawn at random from registered voters is before the Court, that that will satisfy the requirements of Code of Civil Procedure Sections 204, et seq. and will satisfy the law as the People believe it exists under certain cases that I will cite to the Court at the appropriate time.

"We are willing to stipulate with counsel to any evidence of demography, that is, population, ethnic balances or numbers of various groups within the judicial district if that is within his evidence, he wishes to present. Our position is that the method that is used now that will be subject of stipulation is a fair one and does not fly in the face of the defendant's right to a fair trial and of a fair cross section of the community represented upon the jury that he will be afforded in this particular case.

"So I am willing to basically stipulate with counsel the contents of all the evidentiary matters in the former motion that was presented. It is a considerable number of pages of testimony, I believe several hundred, at least, and supplemented, I understand, by Mr. Butler's testimony this afternoon as to the specifics of the demography and population complexion, if you will, of the Long Beach Judicial District.

"All of those things I am willing to stipulate to and I believe that based on the cases of Rubio vs. Superior Court, Adams vs. Superior Court and People vs. Sirhan that the defendant in the brief written notice he has given has laid out at least the prima facie grounds upon which he can challenge the jury, but I don't feel factually he will be able to carry forward his challenge. I will be willing to stipulate to most anything." (RT 306-307).

* * * * * *

LONG BEACH, CALIFORNIA; TUESDAY, APRIL 22, 1980; 1:35 P.M.

DEPARTMENT SOUTH C HON. D. STERRY FAGAN, JUDGE

(Appearances as heretofore noted.)

". . . .

"MR. SEIFERT: All right. I must take issue with the basic foundation upon which the defense, if you will, house of cards is built in that the defendant would argue apparently that he and his witnesses and evidence have made out a prima facie case of discrimination. I suggest the evidence is not conducive to that conclusion and does not lead to that conclusion because the nature of the evidence itself, as I attempted to focus, at least in part on the cross-examination of Dr. Butler, shows this Court, I think, clearly that his figures and facts are as speculative as his conclusion that all Spanish-surnamed persons in California are citizens. Such a preposterous statement and assumption by a demographer, whose sworn obligation as a witness is to present reliable information to this Court, flies in the face of reason and shows that Dr. Butler is closing his eyes to certain realities that everyone in this community is confronting. And that is the great deal of influx of illegal aliens of Spanish descent into our community, which is a large problem, not one that can be ignored by the mere assumption that all Spanish-surnamed persons are citizens for purposes of his statistics.

"His evidence that he presents is also speculative in that it does not get to the heart of the matter. The Supreme Court of the United States has never indicated to this day that a jury venire must mirror the ethnic balance, if you will, in the community but merely has indicated that it must reflect a fair cross section. That's totally different than a mirror. And the California Supreme Court and the appellate courts in California have consistently held that a review of the demographic makeup of the people of the community cannot be taken from the people as a whole but must reflect the eligible jurors in the community and how they stack up against the jury venire. And particularly in the case of Adams vs. Superior Court, 27 Cal.App.3d 719, the Court discusses the difference between a challenge of discrimination versus statistics from the entire community versus a more reliable challenge based on the statistics reflecting the makeup of the eligible jury or juror population. And the Court concludes clearly that a much greater disparity between the population as a whole and the jury venire will be permitted because it is assumed that there are many more people than are eligible for jury service. And all of the questions on

cross-examination that I attempted to get answers to from Dr. Butler focused on the very fundamental issue, does his survey or any survey he is aware of focus on the eligible juror population as the measure against which we compare the jury venire? And the answer was a resounding no in that Dr. Butler concluded that there was no available source material to determine eligible juror population, but he did concede that the only possible source of statistical information that would lead to likely eligible jurors was the list of registered voters, which both statutorily is called for as the basis for the jury venire in the Code of Civil Procedure, Section 214, and also that defines the qualifications for jurors and, further, that has been approved as the single source of jurors and is constitutional under the following cases: People vs. Sirhan, 7 Cal.3d 710; People vs. Waw, W-a-w, 74 Cal.App.3d 633; People vs. Cabral, C-a-b-r-a-l, 51 Cal.App.3d, page 707; People vs. Breckenridge, 52 Cal.App.3d 913; and People vs. Newton, N-e-w-t-o-n, at 8 Cal.App.3d 359. All of those cases have concluded that the statutory permission to use the jury list as the single source of jurors is constitutionally valid.

"I think the prime point by the defense is it is premature in many aspects and speculative in many. It is speculative in the updating of a ten-year-old census, which is not reliable in the first place as a factual basis upon which to conclude the present population makeup, and further it is speculative in that it doesn't divide its inquiry into looking at the eligible juror population versus the many, many ineligible aliens, the many, many people who do not speak English, the many, many people who are infirm or unqualified as jurors for other reasons, for many, many people who have been convicted of felonies and would not be eligible for jury service, and all of the other persons who, for other reasons, would not be eligible for jury service. So in looking at the population as a whole, we get an unfair and a distorted picture as to who could be a juror, if they wanted to, and I suggest that the evidence of the defense is largely speculative because of that particular area of their inquiry, looking at the population as a whole.

"I don't think, and I think the Court will be forced to agree, in reviewing the evidence submitted by virtue of these various documents that the defense has made out a prima facie case of the type of invidious discrimination that is required in the Supreme Court cases cited before the system of selection of jurors, either grand jurors or petit jurors, is thrown out as

unconstitutional and discriminating. I will quote from Taylor vs. Louisiana, at 419 U.S. 522. The law edition cite is 42 Law Edition 2d 690. And the law says there at page 702 of the law edition report, and I quote, 'The fair cross section principle must have much leeway in application. The states remain free to prescribe relevant qualifications for their jurors and to provide reasonable exemptions, so long as it may be fairly said that the jury lists or panels are representative of the community.'

"We have the evidence of the defendant's own expert, who, in his opinion, stated in answer to three separate questions on cross-examination that he assumes that the juror rolls, particularly those in Long Beach, are comprised of a fair cross section of the registered voters in the community. He cannot point to any discrimination by virtue of any invidious criteria such as race, creed, color, sex, age, income or any other criteria that indicates to him that jurors are excluded because of any of those reasons. He's told us, and the evidence submitted by stipulation also substantiates, that jurors are chosen completely at random, without regard to any illegal critera and are only excused upon a showing of good cause that they must bring forward, not automatically excused, as was the case in Duren vs. Missouri, cited in the various papers presented to Your Honor.

"We have a situation here where the People of the State of California and all public agencies are making a conscientious effort to draw more and more people into those rolls of registered voters. It is quite clear that there is an ongoing public relations campaign to get everyone who is eligible to vote to get out and do so, to make themselves a part of the system, if you will, to get them involved in the processes of government and particularly jury service and voting.

"It would appear then that the basic challenge, if there is one, that counsel, through his witnesses, is pointing to is that our law discriminates against unregistered voters, if anything, because those are the people or all of those people who are unregistered voters are not brought into the jury venire selection pool. And in order to establish that that is of constitutional dimension, it is required under the cases of Castaneda vs. Partida, and all of the other cases cited to the Court in the submitted documents that the discrimination must be against, quote, a cognizable group, unquote.

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"Adams vs. Superior Court, which is controlling in this particular case, states, and I will quote - I am sorry. It is People vs. Sirhan, at 7 Cal.3d 710. The California Supreme Court has stated that those who do not choose to register to vote cannot be considered a cognizable group within the meaning of those cases cited. And that is at page 750 of the Court's opinion, which begins at page 710. So if the statistics, if the testimony of Dr. Butler has any meaning at all, what he is telling us is we are not including within the jury venire people who are not registered voters. The California Supreme Court tells us that is not a cognizable group within the constitutional definition of that phrase by the U.S. Supreme Court. Further, the statistics are meaningless, since they don't cover the eligible juror population, as compared to all people physically located in the, quote, community, end of quote. I think counsel's evidence and all that submitted falls short of a viable challenge to our system. And the fact of the system changing, according to Dr. Butler, to include DMV registrants in the pool does not render this system today violative of the constitutional protection of this defendant to a fair trial by a jury that's a representative cross section of the community. And the evidence would be apparently, according to Dr. Butler, that the jury does represent an eligible cross section of the community in that the eligible jurors are chosen from the registered voters who are all required to be citizens and otherwise apparently eligible for jury service under the definitions. I submit it." (RT 433-438.)

* * * * * *

Code of Civil Procedure section 198:

"A person is competent to act as juror if he or she is:

"1. A citizen of the United States of the age of 18 years who meets the residency requirements of electors of this state;

"2. In possession of his or her natural faculties and or ordinary intelligence, provided that no person shall be deemed incompetent solely because of the loss of sight or hearing in any degree or other disability which substantially impairs or interferes with the person's mobility; and

"3. Possessed of sufficient knowledge of the English language.

". . . ."

Code of Civil Procedure section 199:

"A person is not competent to act as a trial juror if any of the following apply:

"(a) The person does not possess the qualifications prescribed by Section 198.

"(b) The person has been convicted of malfeasance in office or any felony or other high crime.

"(c) The person is serving as a grand juror in any court of this state."

Code of Civil Procedure section 200:

"The court shall excuse a person from jury service upon finding that the jury service would entail undue hardship on the person or the public served by the person."

* * * * * *

Code of Civil Procedure section 203:

"Each court shall adopt rules supplementary to such rules as may be adopted by the Judicial Council, governing the selection of persons to be listed as available for service as trial jurors. The persons so listed shall be fairly representative of the population in the area served by the court, and shall be selected upon a random basis. Such rules shall govern the duties of the court and its attaches in the production and use of the juror lists. In counties with more than one court location, the rules shall reasonably minimize the distance traveled by jurors. In addition, in the County of Los Angeles no juror shall be required to serve at a distance greater than 20 miles from his or her residence."

Code of Civil Procedure section 204.7 (in part):

"(a) Source lists of jurors shall identify persons who reside in the county, and who are 18 years of age or older, shall include those who are registered voters, and to the extent that systems for producing jury lists can be practically modified, without significant cost, shall also include those who have been licensed or issued an identification card pursuant to Article 3 (commencing with Section 12800) and Article 5 (commencing with section 13000) of Chapter 1 of Division 6 of the Vehicle Code. Qualified jury lists and master jury lists derived from the source lists shall be prepared so as to reasonably minimize duplication of names."

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

No. 84-265

STATE OF CALIFORNIA,

Petitioner,

v.

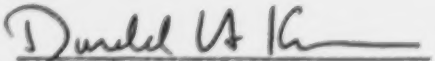
LEE EDWARD HARRIS,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of the
State of California

MOTION TO PROCEED IN FORMA PAUPERIS

Respondent, LEE EDWARD HARRIS, by his undersigned counsel, asks leave to file the attached Brief in Opposition without prepayment of costs and to proceed in forma pauperis pursuant to rule 46. Counsel has not yet received an affidavit from respondent, who is presently incarcerated and awaiting trial in Long Beach, California. Mr. Harris' affidavit in support of this motion will be forwarded to this Court immediately upon receipt.



DONALD L.A. KERSON
Deputy State Public Defender

Attorney for Respondent

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

No. 84-265

STATE OF CALIFORNIA,	:	
Petitioner,	:	
-against-	:	AFFIDAVIT
LEE EDWARD HARRIS,	:	
Respondent.	:	

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) s.s.:

DONALD L.A. KERSON, being duly sworn, states:

1. I am a Deputy State Public Defender and counsel to LEE EDWARD HARRIS in California v. Harris, now pending in this Court on petition for writ of certiorari. I make this affidavit in support of Mr. Harris' motion for leave to proceed in forma pauperis.

2. Mr. Harris is presently in the custody of the State of California and is not immediately available to sign an in forma pauperis affidavit. Such an affidavit has been sent to Mr. Harris by me and will be forwarded to this Court immediately upon receipt. A copy of the affidavit to be signed by Mr. Harris is attached hereto.

3. Counsel was appointed to represent Mr. Harris at trial, on appeal, and on these post-appeal proceedings.

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4. I am informed and believe that because of his poverty, Mr. Harris is unable to pay the costs of this cause or to give security for same.

Donald L.A. Kerson

DONALD L.A. KERSON
Deputy State Public Defender

Sworn to before me this
13th day of September 1984.

Adrian K Panton

NOTARY PUBLIC

My commission expires:

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

No. 84-265

STATE OF CALIFORNIA,	:
Petitioner,	:
-against-	:
LEE EDWARD HARRIS,	:
Respondent.	:

I, LEE EDWARD HARRIS, being duly sworn, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees and to proceed in forma pauperis:

1. I am the respondent in the above-entitled case.

2. Because of my poverty I am unable to pay the costs of said cause; I own no real or personal property; I am presently incarcerated, and have been for the past five years; I receive no income from earnings, and have no cash or checking or savings account.

3. I am unable to give security for said cause.

4. Counsel was appointed to represent me at trial, on my direct appeal, and on these post-appeal proceedings.

LEE EDWARD HARRIS

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) s.s.:

The foregoing affidavit of LEE EDWARD HARRIS was subscribed and sworn to before me this ____ day of _____

NOTARY PUBLIC

My commission expires:

IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

STATE OF CALIFORNIA,	:
Petitioner,	:
-against-	:
LEE EDWARD HARRIS,	:
Respondent.	:

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of the United States Supreme Court and that I have on this date served a copy of the Brief in Opposition and Motion to Proceed in Forma Pauperis, by depositing said in the United States Mail, postage prepaid and properly addressed to John K. Van De Kamp, Attorney General, John R. Gorey, Esq., Deputy Attorney General, Room 800, 3580 Wilshire Boulevard, Los Angeles, California 90010, and Clerk, California Supreme Court, 4250 State Building, 455 Golden Gate Avenue, San Francisco, California 94102.

All parties required to be served have been served.

Dated this 14th day of September 1984, at Los Angeles, California.

DONALD L.A. KERSON
Deputy State Public Defender
107 South Broadway, Suite 9111
Los Angeles, California 90012